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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

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 9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **David T. Tran,**12 **ED Cv17-00583 AB**13 **CASE NUMBER:**

14 Plaintiff,)
 15 v.) **COMPLAINT FOR DAMAGES FOR:**
 16)
 17 **Ross University School of Medicine**) 1) BREACH OF IMPLIED CONTRACT;
 18) 2) BREACH OF CONTRACT (twice);
 19) 3) CONTRACT FRAUD;
 20) 4) MISREPRESENTATION;
 21) 5) BREACH OF FIDUCIARY DUTIES;
 22) 6) BREACH OF COVENANT;
 23) 7) CALIFORNIA'S UNFAIR
 24) COMPETITION LAW (in violation of);
 25) 8) CALIFORNIA EDUCATION CODE
 26) § 94814 (in violation of);
 27) 9) NEGLIGENCE;
 28) 10) INTENTIONAL/NEGLIGENT
 29) INFILCTION OF EMOTIONAL
 30) DISTRESS;
 31) 11) REHABILITATION ACT OF 1973 (as
 32) amended) (in violation of);
 33) 12) TITLE VI, CIVIL RIGHTS ACT OF
 34) 1964 (in violation of)

PARTIES, JURISDICTION, and VENUE

1. David T. Tran (PLAINTIFF) brings suit before the District Court *pro se* and *in forma pauperis*. Suit meets federal diversity jurisdiction, pursuant to 28 U.S.C. § 1332, since PLAINTIFF (currently domiciled in California and at the time the causes of action arose) and ROSS (corporation with a principal place of business in a US state outside of California) are citizens of different states AND the amount in controversy exceeds the minimum threshold of \$75,000. Suit also meets federal question jurisdiction, pursuant to 28 U.S.C. § 1331, since some causes of action arise “under the Constitution, laws, or treaties of the United States.” Furthermore, suit meets personal jurisdiction over defendant according to “minimum contacts”, pursuant to C.C.P. § 410.10, would not “offend traditional notions of fair play and substantial justice” and would not “violate the nonresident defendant’s constitutional right to due process” (See *International Shoe Co. v. Washington* (1945)). As a result, supplementary jurisdiction is also met, pursuant to 28 U.S.C. § 1367. Hence, subject matter and personal jurisdictional requirements are met and are explained in ¶ 2-7 below.

2. The Defendant, Ross University School of Medicine (hereinafter referred to as ROSS), is a private, for-profit medical school with administrative offices in the County of Broward, Florida, at 2300 SW 145th St., Suite 200, Miramar, Florida

1 30027 and in the County of Middlesex, New Jersey, at 485 US Highway 1 South,
2 Building B 4th Floor, Iselin, New Jersey 08830. ROSS also conducts its Basic
3 Sciences (16 months) portion of the 4-year medical curriculum on the East
4 Caribbean island of Dominica, Lesser Antilles, where the causes of action arose
5 from (but were initiated in California). The medical school dean's office is located
6 at the Florida address. Hence, ROSS has administrative offices in the US and
7 significantly recruits students from regional offices throughout the US, including
8 California. Furthermore, ROSS receives service of process only in the US state of
9 New Jersey even though it is under the jurisdiction of the Commonwealth of
10 Dominica. It is uncertain of ROSS' principal place of business, but it is sure to be
11 either in the US state of New Jersey, Delaware, or Florida (hence, in the US). It is
12 also essential to realize that ROSS "came to PLAINTIFF" and that PLAINTIFF did
13 not "come to them" for recruitment and solicitation purposes. Therefore, ROSS
14 solicited a product (in the form of education) to a Californian (the plaintiff) in
15 California.

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23 3. California "state court jurisdiction over the person of a defendant is
24 dependent upon three factors: (1) jurisdiction of the state in the constitutional sense;
25 (2) due process in the form of adequate notice and the opportunity for a hearing;
26 and (3) compliance with the state's statutory requirements for the service of
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1 process" (1 Witkin, Cal. Procedure (2d ed. 1970) Jurisdiction, § 75, p. 600; Li, Cal.
2 Jurisdiction and Process (Cont. Ed. Bar 1970) pp. 16-17.
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5 4. Although it is certain that ROSS' principal place of operations is outside of
6 California, this state (California) has "personal jurisdiction" (*in personam*) over
7 ROSS under the 'minimum contacts' doctrine, pursuant to C.P.P. § 410.10, since
8 ROSS conducts ongoing and substantial business within this state via various
9 recruitment methods, including the use of graduate school information seminars,
10 on-campus graduate school information sessions and booths, advertisements by
11 posting on university billboards, mailing prospective and admitted students catalogs
12 and brochures, electronic communications with students and prospective students
13 from California (including PLAINTIFF), and online advertisements; see *Hall v.*
14 *LaRonde* (1997) 56 CA4th 1342, 1344. With respect to C.P.P. § 410.10, the section
15 "manifests an intent to exercise the broadest possible jurisdiction. The
16 constitutional perimeters of this jurisdiction are found in the decisions of the United
17 States Supreme Court" (see *Michigan National Bank v. Superior Court*, 23 Cal.
18 App. d3 1 [99 Cal. Rptr. 823]). Relevant to the causes of action, ROSS' affirmative
19 conduct of performing business within California directly led to the recruitment of
20 PLAINTIFF. Substantial communication between both parties occurred while
21 PLAINTIFF was present in and a resident of California (and during recruitment
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1 activities). Hence, it is clear that ROSS also meets the “purposeful availment”
2 prong under ‘minimum contacts’, attempting to avail itself of forum benefits.
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4 Although the ‘actual’ events constituting the causes of action occurred in a
5 jurisdiction outside of the United States of America, it is immaterial since ROSS
6 meets personal jurisdiction requirements in this state and the ‘minimum contacts’ is
7 relevant to the causes of action (9) and would promote judicial fair play and
8 substantial justice (see *Luberski, Inc. v. Oleficio F.LLI Amato S.R.L.*, 171 Cal. App.
9 4th 409, 89 Cal. Rptr. 3d 774 (4th Dist. 2009)). Furthermore, although not related
10 to the causes of action, ROSS has hospital affiliations in the state of California,
11 including Kern Medical Center in Bakersfield, California and California Hospital
12 Medical Center in Los Angeles, California. Also, ROSS conducted an admissions
13 interview with PLAINTIFF at one of its proprietor’s (DeVry Education Group)
14 locations in San Diego, California. Hence, although the causes of action arising out
15 of the relationship between PLAINTIFF and ROSS were carried out and performed
16 in the Commonwealth of Dominica, the causes of actions were initiated in
17 Riverside County, California (and where solicitation of ROSS’ educational services
18 and recruitment took place). Moreover, a “state has power to exercise judicial
19 jurisdiction over a nonresident individual (or corporation) who does business in the
20 state with respect to causes of action that do not arise from the business done in the
21 state if this business is so continuous and substantial as to make the exercise of such
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jurisdiction reasonable ... and it is immaterial whether a state has power to prevent a nonresident from doing business within its territory, or to regulate such business, or whether the business involves interstate commerce. The question in each case is whether an individual has a sufficient relationship to the state arising out of such business that makes it reasonable for the state to exercise judicial jurisdiction over the individual as to the particular cause of action" (see C.C.P. § 410.10(7)). The 'minimum contacts' principle also applies to foreign corporations, which includes out-of-state and out-of-country corporations and that due process requires that relationships between a nonresident defendant and the forum state be such that it is fair and reasonable to require that defendant to submit to suit in the state (see *Cornelison v. Chaney*, 16 Cal. 3d 143, 127 CAL. Rptr. 352, 545 P.2d 264 (1976)). Hence, jurisdiction of the state is met in the constitutional sense.

5. Service of process on ROSS will have occurred once proof of service has been filed. Hence, the requirement for due process in the form of adequate notice and the opportunity for a hearing will have been met.

6. Finally, C.C.P § 416.10 provides for service of process on corporations generally. It makes no distinction between corporations, foreign or domestic, resident or nonresident. [27 Cal. App. 3d 150]. Furthermore, the section reads:

i. "A summons may be served on a corporation by delivering a copy of the summons and of the complaint; (a) To the person designated as agent for service of process as provided by any provision of Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the Corporations Code; (b) To the president or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a general manager, or a person authorized by the corporation to receive service of process ... "

ii. Service of process on ROSS will have occurred under subdivision (a) or (b) of C.C.P. § 416.10 once proof of service has been filed.

iii. Hence, compliance with the state's statutory requirements for the service of process will have been met.

7. Furthermore, suit meets federal question jurisdiction (although it is not necessary since diversity jurisdiction is met as explained above) since there are 2 causes of action that involves the violation of civil rights, namely Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 (as amended). Violation of these statutes are primarily responsible for depriving PLAINTIFF of his personal liberties as a citizen of the United States of America. ROSS must

1 comply with the ADA and civil rights laws since it accepts federal financial
2 assistance from the US Department of Education. Furthermore, the Office for Civil
3 Rights (US Department of Education) explicitly states that a complainant has “the
4 right to file a lawsuit in federal court regardless of the outcome of a case decided on
5 initially by the Office for Civil Rights.” This is relevant because PLAINTIFF
6 originally filed a complaint against ROSS with the Office for Civil Rights, which
7 was dismissed as a result of PLAINTIFF being completely naive of the legal
8 system and submitting a complaint under extreme distress, hoping to find a quick
9 solution. Hence, PLAINTIFF files suit due to exhaustion of all previous remedies.

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15 8. Venue is appropriate since ROSS recruited PLAINTIFF within this district
16 (Riverside County) via a graduate school information booth (where PLAINTIFF
17 spoke to an admissions representative) and advertising fliers at the University of
18 California, Riverside (PLAINTIFF’s undergraduate institution), Riverside,
19 California, 92521. PLAINTIFF accepted an admissions offer from ROSS and paid
20 a seat deposit (both via electronic e-mail and payment) in April 2010. Hence,
21 ‘minimum contacts’ are met pursuant to C.P.P. § 410.10 are met for this state and
22 district even though PLAINTIFF brings forth a case involving diversity
23 jurisdiction. Finally, jurisdiction in California and place of court venue in Riverside
24 County would promote judicial fair play and substantial justice, not only because of
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1 ‘minimum contacts’, but for PLAINTIFF’s limited financial resources and the
2 presence of ROSS’ extensive legal network (which also represents its parent
3 company, DeVry Education Group and its various subsidiaries) within California.
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5 Hence, it would be inappropriate for ROSS to file a motion for *forum non*
6 *conveniens* since it would not promote fair play and substantial justice. At this time,
7 PLAINTIFF was a resident at 5254 Marlatt St., Mira Loma, CA 91752, Riverside
8 County. PLAINTIFF currently resides at 4396 Formosa St., Jurupa Valley, CA
9 92509, Riverside County.

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13 9. Suit is deemed timely since “date of injury” did not occur until PLAINTIFF
14 was academically dismissed for the second time in May 2013 and “can be held to
15 be ‘injured’ only when the accumulated effects ... manifests themselves” (see,
16 *Accord, Urie v. Thompson*, 337 U.S. 163 (1949) (construing “accrual” in the
17 Federal Employers’ Liability Act)). Such “date of injury” interpretations was first
18 implemented in a California court case (see, *Associated Indem. Corp. v. Industrial*
19 *Accident Comm’n*, 124 Cal. App. 378, 12 P.2d 1075 (2d Dist. 1932). In essence,
20 PLAINTIFF would not be inclined to file suit if he was not affected by the cause of
21 actions. Furthermore, PLAINTIFF was not inclined to file suit while on the island
22 of Dominica due to the rigorous nature of the medical curriculum (and the fear of
23 potential biases being in a foreign country, including but not limited to racial
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1 motivation, and the economic growth ROSS brings to its surrounding communities)
2 until he returned to the mainland U.S. in May of 2013. However, the statutes may
3 be tolled up to January of 2014 since a second complaint filed with the US
4 Department of Education's Office for Civil Rights by PLAINTIFF concluded in
5 January of 2014 after his second academic dismissal in May of 2013. Finally,
6 PLAINTIFF initially filed suit against ROSS on September 15, 2016, in the
7 Superior Court of California, Riverside County, which was voluntarily dismissed
8 by PLAINTIFF on September 22, 2016, due to his uncertainty on the actual
9 defendant to sue. PLAINTIFF then filed another suit against DeVry Medical
10 International, Inc., one of ROSS' sister corporations, on September 22, 2016, in the
11 Superior Court of California, Riverside County. This case was removed by DeVry
12 Medical International, Inc., pursuant to 28 U.S.C. § 1441, to the Central District
13 Court of the United States, Eastern Division (Case No. 5:16-cv-02262). This case
14 was voluntarily dismissed by PLAINTIFF on November 1, 2016. On December 1,
15 2016, PLAINTIFF re-filed suit against ROSS in the Superior Court of California,
16 Riverside County. This case was voluntarily dismissed by PLAINTIFF on February
17 1, 2017, after in which PLAINTIFF decided to file in federal court on March 27,
18 2017. All cases dismissed were done so without prejudice. Since the "time" does
19 not accrue during periods of tolling and for 30 days after a case is dismissed (and if
20 later re-filed), pursuant to 28 U.S.C. § 1367(d), accrual only occurred from January
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1 of 2014 through September 15, 2016 (2 years, 7 months), and from March 4, 2017
2 through March 26, 2017 (23 days). All civil actions brought within 4 years after the
3 date of accrual (or less than 4 years of total accrual) of the cause of actions meeting
4 federal jurisdiction shall be considered timely, pursuant to 28 U.S.C. § 1658.

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7 **GENERAL BACKGROUND**

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9 10. PLAINTIFF was medically diagnosed with Obsessive-Compulsive
10 Disorder (OCD) during high school and requires reasonable academic
11 accommodations under 34 C.F.R. § 104.44, in order to minimize the effects his
12 disability on his ability to perform academically.

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16 11. PLAINTIFF is an “otherwise qualified” individual with a physical or
17 mental impairment that substantially limits one of “major life activities” under
18 Section 504 of the Rehabilitation Act of 1973 (as amended), in particular his
19 difficulties with concentration arising from the nature of his disability (OCD).
20 Furthermore, ROSS is to comply with Section 504 since it is a program that
21 receives federal financial aid funding from the US Department of Education.

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25 12. A minimum 2.00 GPA is required by the end of the fourth semester of
26 studies in order to advance to clinical studies beginning the fifth semester. If this
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1 “GPA factor” is not met by the conclusion of the fourth semester, the student is
2 subject to academic dismissal.
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5 **STATEMENT OF FACTS AND HISTORY**
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8 13. During his first semester in 2011, PLAINTIFF suffered from disability
9 discrimination, resulting from the inability of ROSS to provide reasonable
10 academic accommodations as required under 34 C.F.R. § 104.44. PLAINTIFF had
11 provided supporting documentation and was entitled to accommodations to
12 minimize the effects his disability had on a “major life activity” as mentioned in §
13 504, concentration. A very reasonable accommodation would be time extensions on
14 examinations, which was not granted despite PLAINTIFF’s request for such time
15 extensions based on his difficulty with concentration during examinations
16 compared to other students.
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19 14. As result of the occurring violations(s), PLAINTIFF was unable to
20 perform to the best of his abilities given the circumstances since examinations
21 taken during the first semester measured his disability rather than his acquired
22 knowledge. PLAINTIFF was forced to “bubble” in answers as time ran out. Failing
23 his examinations ultimately led to his academic dismissal in April of 2011 after his
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1 first semester of attendance for “poor academic performance”.

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4 15. PLAINTIFF filed a complaint with the Office for Civil Rights (OCR)
5 during the summer of 2011, alleging disability discrimination for reasons
6 mentioned in ¶ 13-14.

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9 16. Both parties agreed to undergo an Alternative Dispute Resolution (ADR)
10 and the ECR agreement was reached on October 21, 2011. Later, however, it was
11 realized by PLAINTIFF that the agreement was “lopsided” in several aspects.

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15 17. PLAINTIFF re-matriculated at ROSS in January of 2012, repeating as a
16 first semester student and was given reasonable academic accommodations. With
17 the help from such accommodations, PLAINTIFF was able to pass all of his
18 courses. At the end of the semester, however, PLAINTIFF realized that the three
19 “F” grades received in 2011 were actually averaged into the overall GPA. Hence,
20 although passing all of his courses, PLAINTIFF’s GPA remained well below the
21 minimum 2.00 required by the end of the fourth semester to advance to the clinical
22 semesters beginning the fifth semester.

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26 18. During the re-attempt of his first semester, however, it was brought to the

1 attention of PLAINTIFF that the underlying nature of the ECR agreement was
2 unjust, fraudulent, misrepresented, and oppressive for reasons mentioned below:
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5 a. ROSS failed to disclose to PLAINTIFF during ADR of any
6 grading policy changes that took into effect beginning January of
7 2012 for incoming matriculants. The change in grading policies
8 would make it much more difficult for PLAINTIFF to progress
9 through the medical school curriculum and attain the minimum
10 overall 2.00 GPA required by the end of the fourth semester.
11 This does not take into account the 3 “F” grades received in
12 2011 when PLAINTIFF was not given reasonable academic
13 accommodations, which would be averaged into the overall
14 GPA, thus making it even more difficult to achieve the minimum
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16 “GPA factor”.

17 b. A clause within the ECR agreement was formed out of fraud and
18 deceit that negatively affected PLAINTIFF’s chances of
19 progressing through the medical curriculum successfully.
20 Furthermore, the interpretation of the clause from PLAINTIFF’s
21 perspective was different from that of ROSS’. Hence, in addition
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1 to the presence of fraud in formation of the clause, “meeting of
2 the minds” was absent as well. However, this clause cannot be
3 disclosed as of yet due to the confidentiality clause within the
4 agreement.

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7 19. Very concerned about the change in grading policies, PLAINTIFF
8 immediately e-mailed the school’s academic dean (the Dean), Dr. Joseph Flaherty,
9 regarding the issue. The Dean denied PLAINTIFF’s request to get the issue
10 remedied, mentioning that such requests were “without merit”. Hence, not only was
11 PLAINTIFF battling with the tougher grading policy changes upon his
12 re-matriculation, there was also the obstacle of overcoming the three “F” grades
13 received in 2011 that were averaged into his overall GPA.
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19 20. Displeased and distraught over the matter, PLAINTIFF filed another
20 complaint with OCR, alleging disability discrimination. However, the allegations
21 were not considered for evaluation because PLAINTIFF failed to mention how the
22 change in grading policies constituted disability discrimination since OCR only has
23 jurisdiction regarding protected statutes such as race, color, sex, age, and disability.
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27 21. From May through August of 2012, PLAINTIFF passed all of his
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1 second and third semester courses, although marginally. Marginally passing is still
2 considered “passing” and students have been promoted to the clinical semesters
3 despite marginal or near marginal performance. However, the inability of the Dean
4 to revert the grading policies for PLAINTIFF caused a major distraction. Given the
5 nature of PLAINTIFF’s disability and the effect it had on his ability to concentrate,
6 such distractions were only exacerbated. Despite the distractions, PLAINTIFF
7 managed to pass all of his courses by way of being granted time extensions during
8 his examinations and persevering under adverse circumstances. Hence,
9 PLAINTIFF could have performed better academically but for the major
10 distractions than what results actually show on an academic transcript.

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16 22. During his fourth semester (January of 2013 through April of 2013),
17 PLAINTIFF experienced some minor personal issues, but also significant fears of
18 racial or personal discrimination as a result of unfair treatment towards him in one
19 of his courses, thus creating an extremely hostile environment unconducive to
20 learning that proved to be detrimental to PLAINTIFF’s psychological and
21 emotional well-being.

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26 23. One of the instructors in the ICM subportion of CCSB, Dr. Worrell
27 Sanford, was thought to have racially discriminated against PLAINTIFF. With the
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1 instructor being a native of Dominica, a country at the time, and still perhaps today,
2 with significant anti-Chinese sentiment, it could easily be construed that there was
3 racism involved, particularly with several stereotypical notions made from the
4 instructor, even though PLAINTIFF is of Vietnamese descent. Such allegations
5 may be seen as speculative although such speculations are supported by strong and
6 reasonable inferences. Despite such speculations, some form of prejudice or
7 discrimination did indeed exist in the form of unfair treatment towards PLAINTIFF
8 and another “Chinese” (east asian) student. Lastly, it was not uncommon for
9 PLAINTIFF to experience blatant racial discrimination while in Dominica for
10 being “Chinese”, even from within ROSS and its community.

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16 24. PLAINTIFF was often inappropriately reprimanded and belittled by Dr.
17 Sanford, whereas other students (despite PLAINTIFF performing to the level
18 similar or better to that of other students within the ICM subportion) were not. As a
19 result, the instructor gave PLAINTIFF 3 “poor” grades, which would automatically
20 constitute failure in the ICM subportion, hence, failure from the entire CCSB
21 course. Such targeted treatment inflicted severe psychological trauma, thus causing
22 PLAINTIFF to miss several class meetings due to fear of further negative treatment
23 from the instructor and his inability to sleep. Furthermore, the “feeling” of being
24 discriminated upon had devastating psychological and emotional consequences as
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1 well.
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5 25. PLAINTIFF's psychological ill-health brought him to see Ms.
6 Catherine McCarthy, LCSW, one of the clinical counselors at ROSS. Ms.
7 McCarthy described PLAINTIFF as suffering from a "grave" psychological state.
8 She also wrote "letters of excuse" for PLAINTIFF after missing mandatory CCSB
9 activities due to the rapid deterioration in his mental health.
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12 26. A couple of weeks prior to the final examination, Dr. Lynn Sweeney,
13 one of several CCSB coordinators, arranged a meeting with PLAINTIFF and Ms.
14 McCarthy. At the meeting, Ms. McCarthy reiterated that it was essential that people
15 around PLAINTIFF provided support for him, including ROSS, stemming from the
16 severe psychological adversity PLAINTIFF was experiencing.
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19 27. With issues in the ICM subportion, one of the clinical directors, Dr.
20 Philip Cooles investigated the issue and determined that there were dilemmas with
21 the "student-instructor" interaction and that PLAINTIFF's three "poor" grades
22 would not count against him. At the same time, the only other east asian student in
23 the class section was also receiving arbitrary "poor" grades, which was determined
24 to not count against him due to issues with the "student-instructor" interaction as
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1 well. Furthermore, PLAINTIFF was allowed to relocate to a different section and
2 instructor for ICM. However, relocation was granted towards the end of the
3 semester when much psychological damage had already occurred. It is also
4 important to note that almost everyone, historically, easily passes the ICM
5 subportion and a student receiving even one “poor” grade is very uncommon.
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9 28. Concurrently, PLAINTIFF also had the burden of dealing with multiple
10 unexcused absences in CCSB activities due to his psychological and emotional
11 instability stemming from Dr. Sanford’s arbitrary behavior. By missing a certain
12 amount of mandatory CCSB activities (aside from the three “poor” grades),
13 PLAINTIFF was at risk of failing the course as well. Hence, one could fail CCSB
14 by either receiving at least three “poor” grades or having at least two unexcused
15 absences.
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20 29. Concerned, PLAINTIFF emailed the Dean regarding his issue with his
21 former ICM professor, hoping that one of the unexcused absences would be
22 “overlooked” and pardoned so that PLAINTIFF could pass the CCSB course (the
23 three “poor” grades were already pardoned at this point in time by Dr. Philip
24 Cooles). The Dean did not respond until PLAINTIFF sent him a different e-mail
25 depicting a “sobbing” story, hoping that by taking responsibility rather than
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1 *seeming* to make an excuse for academic troubles, the Dean would pardon the
2 unexcused absences. PLAINTIFF was reluctant to further mention issues regarding
3 his interactions with Dr. Sanford and the emotional and psychological ramifications
4 stemming from such interactions due to fear of retaliation and lack of trust in the
5 administration. Hence, accepting responsibility seemed like the only safe route at
6 the time. The Dean actually replied with “I’ll try my best, but I can’t promise you
7 anything.” The Dean never replied thereafter regarding his decision to overlook the
8 unexcused absences.

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13 30. A week prior to the final examination, some faculty members
14 recommended PLAINTIFF to take a leave-of-absence (LOA), which would allow
15 PLAINTIFF to start anew the following term. Once a student takes the final
16 examination, he or she cannot file for LOA. However, PLAINTIFF was extremely
17 hesitant to file for LOA based on particular circumstances that administration failed
18 to take into account;

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23 a. Taking an LOA would be redundant because PLAINTIFF was
24 informed less than a week prior to the final examination that he
25 was already subject to dismissal based on his failure in CCSB as
26 a result of missing a certain number of mandatory activities.

1 Furthermore, Dr. Matthew Nelson mentions that there was the
2 possibility of PLAINTIFF being dismissed for not meeting the
3 minimum 2.00 “GPA factor”. However, Dr. Nelson failed to
4 realize that PLAINTIFF’s chances of meeting the criterion was
5 highly unlikely. PLAINTIFF even mentions this to
6 administration, but further advice was not given. Simply put it,
7 PLAINTIFF was forced in such a difficult situation due to
8 ROSS’ inability to counsel PLAINTIFF of his academic
9 difficulties (as perceived by ROSS prior to semester 4) and
10 inform him that he was unlikely to advance to the fifth semester
11 since his GPA was too low, making it difficult to attain the
12 minimum 2.00 required by the end of semester 4. PLAINTIFF
13 saw nothing wrong with his academic performance since he
14 continued to pass all of his courses after being given academic
15 accommodations upon his re-admission in 2012.

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23 b. After meeting with a financial aid counselor, ROSS failed to
24 properly counsel PLAINTIFF regarding his question of whether
25 repeating the fourth semester would require him to re-pay tuition
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1 (around \$19,000 at the time) and how it would affect his
2 financial aid status upon re-enrollment.
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5 c. Furthermore, it was questionable to whether or not the “GPA
6 factor” would be overlooked even if he were to repeat and pass
7 all of his courses since nearly perfect grades were required in
8 order to meet the “GPA factor”, a feat that seemed unlikely
9 based on PLAINTIFF’s past academic history. If not, then
10 PLAINTIFF would inevitably incur more debt upon facing
11 another academic dismissal. Moreover, it did not make logical
12 sense that ROSS made it seem like there was a possible benefit if
13 PLAINTIFF were to take the final examination since ROSS
14 knew that he had already failed CCSB well in advance of the
15 final examination and that failure in one course constituted an
16 impossibility of advancing to the subsequent semester the
17 following term. The best scenario would be to repeat. However,
18 PLAINTIFF was still awaiting a reply from the Dean about his
19 failure in CCSB due to the distressing situation in the course so
20 that he would not have to repeat the following semester. Two
21 failures automatically constituted an “subject to dismissal”
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1 status. Unfortunately, however, PLAINTIFF failed one course
2 (“Reproduction and Integumentary”) as a result of the final
3 examination, which constituted, at that time, a “subject to
4 dismissal” status for failing that course and CCSB and
5 “Reproduction and Integumentary”. At this point, PLAINTIFF
6 was hoping the Dean would overlook the failure in CCSB so that
7 he could repeat the following term rather than having a “subject
8 to dismissal” status.

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13 d. Deciding on the next course of action given the small time frame
14 to make such pressuring and pivotal decisions considering the
15 unreliability of ROSS’ recommendations, PLAINTIFF was very
16 hesitant in filing for LOA due to the disconcerting and
17 discombobulating administrative situation with ROSS.

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22 31. PLAINTIFF studied for the final examination despite the
23 overwhelming distractions and administrative uncertainties that were eminent at the
24 time. PLAINTIFF took the final examination on March 24, 2013. As a result of the
25 examination, PLAINTIFF failed one of his courses, “Reproduction and
26 Integumentary” (as mentioned in ¶ 30, subpart c), by 2 percentage points.

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2 32. Following the examination, it was brought to PLAINTIFF's attention
3 that some questions on the examination were accessible to students prior to the
4 examination as recycled questions from leaked study guides. Such questions were
5 not pointed out in class or were not present in any official class files, thus making it
6 unfair for the PLAINTIFF since he did not have access to these questions. This
7 could be significant since outside accessibility could have altered the class curve
8 for the minimum passing score or could have allowed PLAINTIFF to overcome the
9 2 percentage points (equivalent to one question) if given access to those questions.
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14 33. At this point (after the final examination), PLAINTIFF had already
15 received two "F" grades, one in CCSB and the other in "Reproduction and
16 Integumentary".
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20 34. As stated in OCR's determination of a complaint later filed in 2013
21 (after Plaintiff's second academic dismissal), the Dean mentions that it would have
22 been "mathematically impossible" for PLAINTIFF to attain the minimum 2.00
23 GPA even if he repeated the fourth semester in order to advance to clinical studies.
24 Hence, the "GPA factor" was crucial in determining if PLAINTIFF was to be
25 promoted to the clinical semesters or not, and that his situation was no exception to
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1 the rule. Furthermore, Dr. Nelson also mentions the “GPA factor” in an e-mail
2 dated on March 14, 2013.
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5 35. Accordingly, the Student Handbook (the Handbook) mentions that “At
6 appropriate points in the educational process, the faculty reviews the progress of
7 each student in order to identify any academic difficulties that may exist or are
8 developing.” This is relevant because ROSS failed to counsel PLAINTIFF of any
9 potential academic issues even though he was in jeopardy of another academic
10 dismissal even if PLAINTIFF were to pass all of his fourth semester courses since
11 his overall GPA was still well under 2.00 (because ROSS egregiously factored the
12 three “F” grades received in 2011 when PLAINTIFF was not given reasonable
13 accommodations into his overall GPA) despite successfully progressing to
14 subsequent semesters upon his re-admission.
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17 36. Since PLAINTIFF was a marginal to average student (on record) at
18 best after re-matriculating in 2012, the administration was obligated to notify him
19 of his academic situation because nearly “straight A” grades were required of
20 PLAINTIFF during the fourth semester to reach the minimum 2.00 GPA required
21 to advance to the fifth semester. It was assumed by PLAINTIFF that, by passing all
22 of his courses after re-matriculation while given reasonable academic
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1 accommodations and that administration had not yet warned him of any academic
2 troubles, he was performing satisfactorily.
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5 37. The inability of ROSS to counsel PLAINTIFF of his academic
6 situation, taking into account the “GPA factor”, meant that PLAINTIFF incurred
7 unnecessary time as an enrolled student, money spent, and the stress of being a
8 medical student. Essentially, ROSS’ conduct led to PLAINTIFF’s detriment,
9 particularly from events during his fourth semester of attendance that would prove
10 to have long-term psychological and emotional consequences.
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14 38. Furthermore, it was questionable to the actual grounds leading to
15 PLAINTIFF’s status of “subject to dismissal”. Since ROSS factored in the three
16 “F” grades received in 2011 (into his overall GPA) when PLAINTIFF was not
17 given reasonable academic accommodations, it was easily and reasonably assumed
18 that the failed courses then culminated as one offence. Two offences constitutes an
19 academic dismissal according to the Handbook. Hence, PLAINTIFF was under the
20 reasonable impression that anymore offences, including one more “F” grade, was
21 grounds for a “subject to dismissal” status.
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1 39. This assumption was somewhat affirmed when PLAINTIFF was
2 notified that he had failed CCSB a week prior to the final examination, while
3 awaiting a reply from the Dean, hoping that he would pardon the unexcused
4 absences, similar to Dr. Cooles dismissing the “poor” grades due to “extenuating
5 circumstances” and the unfortunate situation with Dr. Sanford. Although
6 PLAINTIFF assumed that he had already committed his second offence, it was
7 urged and recommended by faculty members that PLAINTIFF file for LOA.
8 However, it would be redundant to file for LOA since PLAINTIFF had already
9 committed his second offence and would be “subject to dismissal” regardless.
10 Hence, this was one of the reasons PLAINTIFF was also hesitant in filing for LOA
11 due to high uncertainty and the inability of ROSS to provide proper and sound
12 guidance, particularly during a time when PLAINTIFF was experiencing immense
13 psychological and emotional distress, and incapable of making rational decisions in
14 his best interests.

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16 40. Accordingly, it remains uncertain (due to the ambiguity of the ECR
17 agreement) to what actually triggered the “subject to dismissal” status because it
18 was later implied that PLAINTIFF’s failure in CCSB was his first offence and the
19 “F” grade received as result of the final examination (“Reproduction and
20 Integumentary”). If this were the case, it would have made PLAINTIFF’s decision
21 22 23 24 25 26 27 28

1 to file for an LOA a lot easier since the second offence would have been avoided
2 by not sitting for the final examination. This could be the reason why it was
3 recommended to take the LOA. However, filing for LOA would mean PLAINTIFF
4 still must attain nearly “straight A” grades upon his return in repeat of his fourth
5 semester, a feat that seemed highly unlikely based on prior semester performances,
6 in order to reach the minimum 2.00 GPA requirement to advance to clinical studies
7 beginning the fifth semester. Hence, ROSS did not counsel PLAINTIFF when they
8 were obligated to do so, particularly in reference to the 2.00 “GPA factor” in prior
9 semesters and that a major improvement was required.

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15 41. Regardless of the ambiguous nature of PLAINTIFF’s “subject to
16 dismissal” status, ROSS is liable for creating a *hostile* learning environment,
17 evidenced by PLAINTIFF’s interactions with his ICM instructor and the inability
18 of the Dean to justly revert the grading policies (when it was intentionally or
19 negligently concealed to his awareness during ADR that new grading policies were
20 to take effect upon his readmission), thus giving rise to overwhelming distractions
21 his entire time as a student, thus negatively exacerbating his substantially limited
22 “major life activity” of concentration. In essence, PLAINTIFF was never able to
23 solely focus on his studies his entire duration at ROSS, even in 2011 when he was
24 distraught and extremely distracted over the fact that he was not receiving adequate
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1 and reasonable academic accommodations. Hence, PLAINTIFF did not “fairly” fail
2 any semesters on his own merits, neither in 2011 or 2013. PLAINTIFF was never
3 given a fair opportunity to succeed in medical school.
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6 42. By implementing a new grading policy without notifying the
7 PLAINTIFF upon his readmittance, the effects of arbitrary behavior,
8 discrimination, and the inability of ROSS to abide by its own written rules to
9 provide proper guidance and to mention any perceived academic deficiencies, and
10 provide proper guidance and to mention any perceived academic deficiencies, and
11 the unjust nature of the contents and in formation of the ECR agreement,
12 the unjust nature of the contents and in formation of the ECR agreement,
13 PLAINTIFF’s dismissal is not genuinely an academic decision. Furthermore, the
14 decisions leading up to the dismissal were egregious, oppressive, arbitrary and
15 capricious, and shows a lack of regard for persons with disabilities and students in
16 general. Furthermore, such conduct illustrates the “for-profit” mindset of ROSS.
17 Such conduct from ROSS eventually led to PLAINTIFF’s detriment as exemplified
18 by his unjust academic dismissal.
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22 43. After being dismissed again in April 2013, PLAINTIFF underwent
23 internal grievance procedures with ROSS, but the dismissal was upheld. Without
24 success, PLAINTIFF filed another complaint during that summer with OCR,
25 alleging disability discrimination and retaliatory acts committed by ROSS.
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2 44. The case went to mediation again, but an agreement could not be
3 reached this time. As a result, the case went to investigation. Not being legally
4 versed, lacking a strong understanding of the legal system, and facing a distressing
5 situation, PLAINTIFF presented incoherent claims, particularly claims not
6 supporting disability discrimination. Consequently, the allegations were dismissed
7 along with the case and PLAINTIFF had exhausted his legal options with OCR by
8 January 2014.
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15 45. After the conclusion of the case filed with OCR, PLAINTIFF
16 underwent a lengthy period of depression. He was diagnosed, in addition to his
17 pre-existing diagnosis of Obsessive-Compulsive Disorder (OCD), with Recurrent
18 Major Depression by his psychiatrist, Dr. Mandeep Reddy, M.D. on March 5, 2014.
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22 46. PLAINTIFF has suffered an immense amount of emotional distress,
23 pain and suffering, and psychological damage resulting from the oppressive
24 conduct of ROSS.
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27 47. PLAINTIFF continues to have daily feelings of doubt, shame,
28 embarrassment, and insecurity.

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2 48. The relationship between PLAINTIFF and his spouse has been a very
3 negative one. Heated arguments take place nearly daily due to the PLAINTIFF's
4 frustration and the greater expectations the spouse has of him. There have been
5 periods of short separation between the couple. It has come to a point, in which
6 both are only together "for the kids". Also, PLAINTIFF has been unable to be
7 sexually intimate with his spouse as often as before.
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12 49. The plan while PLAINTIFF was in medical school was for his spouse
13 to quit her job in order to take care of the children and raise them. However, the
14 incident with ROSS required his spouse to look for a new job and to work full-time
15 to financially support the family since PLAINTIFF was unable to find work,
16 particularly with his emotional and psychological ill-health and inability to cope
17 with his dismissal at ROSS. Furthermore, the situation became so horrendous at
18 one point that PLAINTIFF was homeless for a week as a result of his depression
19 and did not want his children to see what their father had become. Hence, such
20 events depicts the psychological and emotional and financial burden ROSS
21 inflicted on PLAINTIFF and his family.
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1 50. Aside from the struggles with his spouse, PLAINTIFF became
2 uncharacteristically and noticeably abusive towards his children. He became easily
3 annoyed and irritable with everything that went on. Furthermore, his eldest child
4 continued to question her parents' love for her as a result of the continuous arguing
5 within the household and the lack of affection between the couple. Being a father of
6 young children, PLAINTIFF did not have the chance to enjoy these precious and
7 memorable years due to his depression, anger, and sense of insecurity.

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12 51. PLAINTIFF has also suffered humiliation and shame from within his
13 family, relatives, and spouse's relatives. Hence, his reputation has been tarnished
14 and his livelihood taken away. For example, he would seldom attend family
15 get-togethers such as barbeques and birthday parties due to fear of rejection,
16 ridicule, and judgment. In several instances, his spouse's relatives questioned why
17 she would still be involved with such a "loser". His spouse's father, a person
18 PLAINTIFF sees daily, would often call him a "deadbeat" and mutter words in
19 Spanish to neighbors. Also, PLAINTIFF's parents would not know what to say
20 when asked of their child's life situation. Such feelings of shame and humiliation
21 has affected PLAINTIFF's emotional and psychological well-being as well as his
22 relationships with the people who matter the most in his life.

52. To this day, PLAINTIFF remains in a state of “limbo”. He continues to experience extreme psychological and emotional distress and suffers relapses with OCD, and daily with his most recent diagnosis, Major Depression. He also has student loans totalling close to \$140,000 and has been stripped of his personal liberty, self-esteem, reputation, and livelihood. Most importantly, PLAINTIFF has been unfairly denied the opportunity to become a physician, a dream he has worked very hard to attain throughout his entire life.

STATEMENT OF CLAIMS

FIRST CAUSE OF ACTION

(Breach of implied contract v. Defendant)

53. PLAINTIFF re-alleges and incorporates by reference allegations contained in ¶ 1-52.

54. The ‘student-institutional’ relationship is an implied contract between PLAINTIFF and ROSS upon PLAINTIFF’s enrollment and payment of tuition and fees

55. ROSS had an obligation to provide an educational environment conducive to learning, free from any form of harassment and discrimination. See

1 Tedeschi v. Wagner College, 93 Misc. 2d 510, 402 N.Y.S.2d 967 (1978) aff'd, 70
2 App. Div.2d 934, 417 N.Y.S.2d 521 (1979).
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5 56. ROSS breached this implied contract due to Dr. Worrell Sanford's
6 conduct towards PLAINTIFF, a major factor in causing PLAINTIFF's subsequent
7 psychological and emotional detriment. Furthermore, ROSS failed to take into
8 account and address Dr. Sanford's conduct towards PLAINTIFF and how this
9 affected PLAINTIFF's academic performance.
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13 57. For the foregoing reasons, PLAINTIFF is entitled to remedies
14 stemming from the breach of implied contract and the ramifications resulting from
15 such a breach, namely consequential damages such as income he would possibly
16 receive from the six or seven years of life lost as an aspiring psychiatrist in San
17 Francisco, CA, and direct damages, such as an injunction, concomitantly, for him to
18 re-enroll as a fourth semester student at ROSS or any comparably accredited
19 medical school. If this is not possible, then PLAINTIFF is instead entitled to a
20 lifetime's psychiatrist salary in San Francisco, CA, as deemed appropriate upon
21 final calculation of damages. There is precedent of an unfairly dismissed medical
22 student winning a case and collected for lost past and future income. See *Sharick v.*
23 *Southeastern University of Health Sciences*. Finally, PLAINTIFF is also entitled to
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1 special damages resulting from the hostile learning environment, unjust academic
2 dismissals, and subsequent psychological trauma inflicted upon by ROSS.
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5 **SECOND CAUSE OF ACTION**

6 *(Breach of Contract v. Defendant)*
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8 58. PLAINTIFF re-alleges and incorporates by reference allegations
9 contained in ¶ 1-57.
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12 59. The Student Handbook represents a binding contract. There is no
13 dispute that this contract existed.
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16 60. ROSS breached this contract when it was to “at particular points in the
17 educational process... identify any academic difficulties that may or are
18 developing,” particularly when it was unreasonable to expect PLAINTIFF to
19 achieve nearly “straight A” grades during his fourth semester to attain the minimum
20 2.00 GPA to advance to the fifth semester. Notwithstanding the “GPA factor”,
21 ROSS still was obligated to identify PLAINTIFF as a risk to a “subject to
22 dismissal” status and counsel him as required by the Student Handbook so that he
23 would be cognizant of ROSS’ intentions of dismissing him if his performance did
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1 not improve substantially. PLAINTIFF read and took into account this section of
2 the Handbook during his stint at ROSS.
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5 61. As a result of this breach, PLAINTIFF spent unnecessary time as an
6 enrolled student, unnecessary money on tuition, and underwent the unnecessary
7 stress that comes with being a medical student as a result of his dismissal at the
8 conclusion of the fourth semester.
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11 62. Accordingly, PLAINTIFF unnecessarily enrolled in the fourth
12 semester where he experienced grave psychological difficulties arising from the
13 conduct of ROSS, leading to long-term psychological and emotional trauma
14 thereafter. In essence, PLAINTIFF would have been “better off” if ROSS would
15 have dismissed him during earlier semesters (despite the issues regarding change of
16 the grading system without PLAINTIFF’s knowledge) so that he would not have
17 undergone the issues that were present during his fourth semester. This ultimately
18 led to the arbitrary and capricious dismissal of PLAINTIFF at the conclusion of the
19 fourth semester.
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22 63. As a legal result of the foregoing, PLAINTIFF was dismissed from
23 ROSS and underwent “grave” psychological trauma during Semester 4 and upon
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his return to the United States of America after his dismissal in 2013. Furthermore, PLAINTIFF continues to endure psychological ill-health and undue hardship stemming from the unlawful acts of ROSS. Hence, PLAINTIFF is entitled to damages (and a possible injunction) as mentioned in ¶ 57.

THIRD CAUSE OF ACTION

(Breach of Contract v. Defendant)

64. PLAINTIFF re-alleges and incorporates by reference allegations contained in ¶ 1-63.

65. A clause within the ECR agreement was breached. Due to the breach it is necessary to disclose the agreement despite a confidentiality clause within the agreement.

66. As a result of the breach, PLAINTIFF suffered injuries and is entitled to damages (and a possible injunction) as mentioned in ¶ 57.

FOURTH CAUSE OF ACTION

(Contract Fraud v. Defendant)

67. PLAINTIFF re-alleges and incorporates by reference allegations contained in ¶ 1-66.

68. ROSS deceived PLAINTIFF during ADR in 2011, leading to a very unconscionable clause within the ECR agreement. A fraudulent representation was made, in which ROSS knew to be untrue and was made for PLAINTIFF to rely on such information, PLAINTIFF relied on this information during mediation, thus leading to the adverse academic situation and subsequent academic dismissal of PLAINTIFF. However, the agreement is confidential and cannot be disclosed as of yet.

69. As a result of such deception, PLAINTIFF suffered injuries and is entitled to the “benefit of the bargain”. Furthermore, such deception contributed to PLAINTIFF’s academic dismissal and subsequent psychological and emotional trauma, which still persists today. Hence, PLAINTIFF is entitled to damages (and a possible injunction) as mentioned in ¶ 57.

FIFTH CAUSE OF ACTION

(Misrepresentation v. Defendant)

70. PLAINTIFF re-alleges and incorporates by reference allegations contained in ¶ 1-69.

71. ROSS failed to inform PLAINTIFF of any grading policy changes that would directly affect him. Such information was obviously unknown to PLAINTIFF and it was unlikely that PLAINTIFF would discover or inquire about such information.

72. As a result of nondisclosure and the subsequent effects such an “unfair surprise” had on the chances of PLAINTIFF of progressing through the medical curriculum, PLAINTIFF was unjustly dismissed from ROSS and is entitled to the “benefit of the bargain”. Moreover, he is entitled to damages (including a possible injunction) as mentioned in ¶ 57.

SIXTH CAUSE OF ACTION

(Breach of Fiduciary Duty v. Defendant)

73. PLAINTIFF re-alleges and incorporates by reference allegations contained in ¶ 1-72.

1 74. Although it is known historically that there is no fiduciary relationship
2 between that of an educational institution and its students, the norm is set aside
3 when the magnitude of the student-institution or student-instructor relationship is
4 “more than a typical one”. Accordingly, ROSS had a fiduciary duty to PLAINTIFF
5 to act with the utmost good faith and in his best interests, reaffirmed by the
6 presence of a rather personal relationship a medical school has with its individual
7 students, the incomparable and intimate trust to that of other professions and
8 undergraduate institutions, advice given to students including PLAINTIFF, and the
9 ECR agreement. Furthermore, the purpose of the ECR agreement was not to allow
10 ROSS “off the hook” and continue its course of oppressive and arbitrary conduct,
11 but for them to protect to a reasonable extent the interests of PLAINTIFF and to
12 behave non-arbitrarily and professionally.

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19 75. In the context of the medical school setting where professionalism is
20 highly expected and valued, PLAINTIFF heavily relied on his instructors and
21 professors as mentors who would instill and provide him the knowledge to become
22 a successful practitioner, while maintaining high ethical standards and an education
23 free from a “hostile” learning environment, arbitrary conduct and discrimination.
24 ROSS was well aware of PLAINTIFF’s vulnerability as a student with a disability,
25 his long-standing history with ROSS, including concerns regarding unfair grading
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1 policies, the deceptive and seemingly unconscionable nature of the ECR agreement,
2 and the unfortunate situation arising during his fourth semester. To this account, it
3 is evident that ROSS failed to exercise to the level of care expected of educators
4 and educational administrators in this context.

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7 76. Lacking regard of one's personal liberties, reputation, and livelihood,
8 ROSS acted oppressively, egregiously, and arbitrarily in breach of duties as
9 educational and educational administrative providers. Hence, ROSS did not live up
10 to its educational mission as "One School, One Team".
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14 77. As a legal result, PLAINTIFF was injured and entitled to consequential
15 and special damages (and a possible injunction) arising out of the fiduciary breach.
16 FURTHERMORE, PLAINTIFF is entitled to punitive damages as permitted under
17 C.P.P. § 3294, as a result of ROSS' oppressive and arbitrary conduct.
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21 **SEVENTH CAUSE OF ACTION**
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23 (Breach in Covenant v. Defendant)

24 78. PLAINTIFF re-alleges and incorporates by reference allegations
25 contained in ¶ 1-77.
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1 79. By enrolling at ROSS, there is an implied student-institutional
2 relationship that must be met with the utmost good faith in performance of duties
3 from both parties. Arbitrary and oppressive action on behalf of ROSS deprived
4 PLAINTIFF to reap the benefits of an education as a consumer of education.
5 Furthermore, the ECR agreement also renders a contractual obligation in which
6 both sides are to act in good faith, even during formation of the agreement since
7 notions of good faith and fair dealing mandates disclosure, which lies, in part, in
8 fraud, deceit, and misrepresentation.
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13 80. Despite the presence of these contracts, ROSS acted in bad faith even
14 after PLAINTIFF expressed his concerns regarding the ECR agreement to ROSS.
15 Furthermore, any reasonable person would view the agreement as unconscionable
16 or disproportionate, thus establishing a bad faith motive due to ROSS' inability to
17 reasonably and justifiably remedy PLAINTIFF's concerns. Notwithstanding the
18 agreement, the implied contract (student-institutional relationship) requires that
19 ROSS carry out its obligated duties with the utmost reasonable care.
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24 81. As a legal result of the breach of fiduciary duties, PLAINTIFF is
25 entitled to damages (and a possible injunction) as mentioned in ¶ 57.
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EIGHTH CAUSE OF ACTION

(in violation of California's Unfair Competition Law v. Defendant)

82. PLAINTIFF re-alleges and incorporates by reference allegations contained in ¶ 1-81.

83. For reasons set forth in Paragraphs 1 through 79, ROSS' business conduct satisfies at least one of the three prongs (unfair, unlawful, fraudulent business acts or practices) in order to establish a UCL claim. See Prof. Bus. Code § 17200 et seq. The purpose of the UCL is to 'protect both the consumers and competitors by promoting fair competition in commercial markets for goods and services'. Accordingly, ROSS acted arbitrarily towards PLAINTIFF throughout his stint at the School of Medicine, including issues pertaining to the formation and implementation of the ECR agreement, the student-institutional relationship, and his dismissal, which cannot be seen as a genuinely academic decision.

84. Furthermore, the contents or nature of the ECR agreement is similar to an advertisement, in which PLAINTIFF relied on the proposed clauses or omitted information on behalf of ROSS in deciding to prolong mediation, accept the agreement as is and re-enroll at ROSS, or continue with investigation during the OCR complaint process. PLAINTIFF even expressed concerns regarding the

1 inequitable situation he was succumbed to and ROSS' refusal to remedy the issue
2 can be seen as extremely unjust to any reasonable person. Hence, PLAINTIFF also
3 incorporates a violation of Prof. Bus. Code § 17500 et seq. (as part of the UCL
4 claim), false and/or misleading advertising or representation.

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8 85. As a legal result, PLAINTIFF suffered injury 'in fact' and has incurred
9 monetary losses from tuition payments, miscellaneous expenses, including but not
10 limited to cost of airline tickets, and future and past income lost, as a result of
11 'unfair' competition and getting the "lower end of the bargain" as it pertains to the
12 student-institutional relationship and the ECR agreement due to bad faith
13 bargaining. Hence, PLAINTIFF has standing for a UCL claim and is entitled to
14 damages (and a possible injunction) as mentioned in ¶ 57.
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19 **NINTH CAUSE OF ACTION**

20 (in violation of California Education Code § 94814 v. Defendant)

21 86. PLAINTIFF re-alleges and incorporates by reference allegations
22 contained in ¶ 1-82.
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26 87. PLAINTIFF has standing to bring forth violation(s) in Calif. Edu. Code
27 § 94814 as a private right of action. See *Daghlian v. DeVry University, Inc.*
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2 88. Section 92814(a) makes it mandatory for post-secondary institutions to
3 "provide to students and other interested persons, prior to enrollment, a catalog[ue]
4 or brochure containing... all... material facts concerning the institution and the
5 program or course of instruction that are reasonably likely to affect the decision of
6 the student to enroll..." Failure to disclose information renders a written contract
7 unenforceable under Calif. Educational Code § 94814(b).
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1 90. Even though the formation of the ECR agreement occurred after
2 PLAINTIFF's initial enrollment at ROSS in 2011, the formation of the ECR
3 agreement can be seen as a pre-enrollment or recruiting matter since PLAINTIFF
4 was seeking readmission. ROSS' failure to inform PLAINTIFF of grading policy
5 changes prior to his re-matriculation in 2012 (in addition to fraud during the ECR
6 agreement) is in violation of § 94814 because such omissions and fraudulent
7 representations would have otherwise affected PLAINTIFF's decision to re-enroll,
8 prolong mediation, or proceed with investigation during the OCR complaint
9 process. Even after PLAINTIFF expressed the unfair situation he faced upon
10 re-matriculation, ROSS failed and was unwilling to rectify the issue, a situation
11 which can be seen as unjust to any reasonable person.
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91. As a legal result of the foregoing, PLAINTIFF suffered injury ‘in fact’ and is entitled to damages (and a possible injunction) as mentioned in ¶ 57.

TENTH CAUSE OF ACTION

(Negligence v. Defendant)

92. PLAINTIFF re-alleges and incorporates by reference allegations contained in ¶ 1-91.

93. Due to irrational, oppressive, arbitrary, and negligent conduct on behalf of ROSS, PLAINTIFF suffered severe emotional and psychological injuries. Furthermore, ROSS has unfairly “destroyed and played with the career” of PLAINTIFF and caused the loss of consortium between PLAINTIFF and his family, in particular with his significant other.

94. ROSS owed a duty to PLAINTIFF to act according with educational and administrative matters absent of arbitrary, oppressive, unfair (even if strict) conduct. ROSS failed this duty as an educational institution of higher learning.

95. Evidently, ROSS' actions were an actual and proximate cause of PLAINTIFF's injuries. Hence, PLAINTIFF is entitled to damages (and a possible injunction) as mentioned in ¶ 57.

ELEVENTH CAUSE OF ACTION

(intentional or negligent infliction of emotional distress v. Defendant)

96. PLAINTIFF re-alleges and incorporates by reference allegations contained in ¶ 1-95.

97. ROSS' conduct towards PLAINTIFF, including but not limited to the capricious and arbitrary academic dismissals of PLAINTIFF and matters pertaining to and leading up to the formation of the ECR agreement, showed extreme recklessness and disregard for the goodwill of PLAINTIFF. Moreover, such conduct was outrageous and oppressive (destroying one's career aspirations, emotional and psychological well-being, and at the same time putting PLAINTIFF under enormous financial debt and caused loss of consortium).

98. Such reckless and outrageous conduct is the cause of PLAINTIFF's emotional distress and is well-documented by PLAINTIFF's psychiatrist.

1 99. As a legal result, PLAINTIFF suffered immense mental distress and is
2 entitled to damages arising from emotional distress as permitted by law.
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5 **TWELFTH CAUSE OF ACTION**

6 (in violation of ADA v. Defendant)

7 100. PLAINTIFF re-alleges and incorporates by reference allegations
8 contained in ¶ 1-99.

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12 101. Since ROSS defrauded and misrepresented information during and
13 leading up to the ECR agreement, the agreement shall be deemed void. Hence,
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15 ROSS shall not be “free” from any wrongdoing prior to the agreement.

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18 102. In January of 2011, ROSS failed to provide PLAINTIFF with
19 reasonable academic accommodations. Even though ROSS did not admit fault, it is
20 evident that ROSS was liable for violating federal law requiring that educational
21 institutions receiving federal financial assistance provide “qualified” individuals
22 with a disability reasonable accommodations. Hence, PLAINTIFF wishes to pursue
23 this cause of action in federal court since the complaint filed in 2011 cannot be
24 reopened.

1 103. As a legal result, PLAINTIFF seeks an injunction for the creation of a
2 new or revised agreement and/or damages resulting from violation of the ADA.
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5 **THIRTEENTH CAUSE OF ACTION**

6 (in violation of Title VI of the Civil Rights Act of 1964 v. Defendant)

7 104. PLAINTIFF re-alleges and incorporates by reference allegations
8 contained in ¶ 1-103.

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12 105. ROSS receives US federal funding from the US Department of
13 Education, and hence, is not exempt from federal anti-discrimination laws,
14 including but not limited to Title VI of the Civil Rights Act of 1964, which
15 prohibits racial discrimination (42 U.S.C. § 2000(d)). Furthermore, the US Supreme
16 Court has determined that individuals have a private right of action for a claim
17 under Title VI. In this case, PLAINTIFF was subject to racial discrimination in his
18 CCSB course.

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23 106. PLAINTIFF is a member of a “protected” racial group. PLAINTIFF
24 was treated differently than similarly situated members of other racial groups with
25 regard to a service, benefit, privilege, participation, etc. In this case, PLAINTIFF
26 was denied the opportunity to participate under “fair” conditions as it pertains to
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1 PLAINTIFF being harassed and graded unfairly due to his national origin (See 34
2 C.F.R. § 100.3(b)(1)(vi)). Discrimination was so severe, pervasive, and objectively
3 offensive that it effectively barred PLAINTIFF access to an educational
4 opportunity or benefit. PLAINTIFF was also denied the privileges enjoyed by
5 others through participation (See 34 C.F.R. § 100.3(b)(1)(iv)).
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9 107. Furthermore, there is no legitimate or non-discriminatory reasons
10 behind the discriminatory actions of PLAINTIFF's CCSB instructor, Dr. Worrell
11 Sanford toward PLAINTIFF himself.
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15 108. As a legal result, PLAINTIFF is entitled to damages (and a possible
16 injunction) as mentioned in ¶ 57.
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DISCUSSION FOR “PRAYER” FOR RELIEF

20 109. It is also appropriate to claim for consequential damages for lost of
21 future and past income (See *Sharick v. Southeastern University of Health Sciences,*
22 *Inc.*) based on the “economic loss rule” (i.e. breach of implied contract) and tort
23 liability (i.e. breach of fiduciary duty).
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